UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ERNEST W. MOODY

Appeal No. 2007-2810
Application No. 09/894,501
Technology Center 3700

Decided: July 13, 2007

Before TERRY J. OWENS, MURRIEL E. CRAWFORD, and HUBERT C. LORIN, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal from a decision of the Examiner rejecting claim 1. 35 U.S.C. § 134 (2002). We have jurisdiction under 35 U.S.C. § 6(b) (2002).

The Examiner has finally rejected claim 1 under 35 U.S.C. 102(b) as being anticipated over Hoke (US Patent No. 2,102,532).

We AFFIRM.

The subject appeal is directed to a method of playing a gaming machine. There are two types of games – games of chance such as slot machines and games of skill such as video poker machines. Specification, p. 1. There are also "secondary event bonus round games." Specification, p. 2. As an example of such a game, the main game or first level may be a slot machine game which, when a player lines up spin symbols on the pay line, qualifies a player to go on to a secondary bonus round where the player may spin a wheel to receive a payout indicated on the wheel when the wheel stops rotating. Specification, p. 3. In this example, the secondary bonus round is a game of chance. "Secondary event bonus round games" have also been added to video poker games (i.e., games of skill). Specification, p. 4.

The invention is a new "secondary event bonus round game" that "gives the player the feel that he is playing a game of skill." Specification, p. 4. That is to say, the invention is a "secondary event bonus round game" that adds a secondary bonus round in the form of an "apparent" game of skill, rather that a true game of skill, to a first level game of chance. According to the Specification, p. 4, "the outcome of the secondary event bonus round game has been predetermined" – thus transforming the "secondary event bonus round games" from one involving skill to

one involving "apparent " skill. In other words, the player would get a payout in winning the first level game of chance no matter how well they play the secondary game.

Claim 1 reads as follows:

> 1. A method of playing a gaming machine in which a bonus round includes an apparent game of skill or knowledge comprising:
> a) a player making a wager to play the gaming machine;
> b) activating the gaming machine to cause a game of chance to occur;
> c) determining an outcome of the game of chance;
> d) if the outcome awards the player with the bonus round, selecting an amount of a bonus payout to be paid to the player during the bonus round; and
> e) allowing the player to participate in the apparent game of skill or knowledge at the end of which the player receives the bonus payout.

A. ISSUE

Appellants contends that

1) "Hoke disclosure does not award the player with a bonus round based on the outcome of the game of chance" (Br. 6);

2) "Hoke does not have a bonus round of any kind" (Br. 7); and,

3) "In Hoke ... the player would not receive the winning payout if the player is unsuccessful in the skill portion of the game.

In claim 1, the player always wins the bonus award" (Br. 7).

The issues are whether Hoke shows awarding a bonus round and a "secondary event bonus round game" that adds a secondary bonus round in the form of an "apparent" game of skill, rather that a true game of skill, to a first level game of chance.

B. FACTS

The record supports the following findings of fact (FF) by a preponderance of the evidence.

1. Hoke shows a slot machine. Should the reels align the player must first shoot a ball in the mouth of a snake to get the payout (p. 4, col. 1, ll. 11-24, the snake can be seen at the top of Fig. 1).

2. Shooting a ball in a snake's mouth is a game of skill.

3. Hoke (p. 4, col. 1, ll. 47-52) discloses: "Should the operator feel it is necessary to adjust the head 87 to have the open mouth 88 more accurate to the path of the throw of the ball ... [adjust the knob]."

C. PRINCIPLES OF LAW

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987), *cert. denied*, 484 U.S. 827 (1987).

D. ANALYSIS

The facts (FF1) show that a player playing the Hoke game of chance cannot play the secondary game of shooting a ball in a snake's mouth unless the reels in the prior game of chance are first aligned. Accordingly the secondary game of shooting a ball in the snake's mouth amounts to a bonus round; i.e., upon winning the game of chance the player is awarded a bonus round requiring the player to shoot a ball in a snake's mouth to receive the winning payout. Shooting a ball is a game of skill. FF 2. Accordingly, Hoke discloses a "secondary event bonus round game" where the bonus round is a game of skill. We therefore find Appellant's argument that Hoke fails to teach a bonus round unpersuasive.

As to the argument that Hoke's bonus round is not an *apparent* game of skill but rather a true game of skill that a player *must* successfully resolve to receive a payout, we direct Appellant's attention to the disclosure in Hoke at p. 4, ll. 47-52. (FF 3.) Hoke indicates that the accuracy of the path of the ball to the snake's mouth may be adjusted. This means Hoke encompasses adjusting the path so that the ball enters the snake's mouth each time the ball is shot. In that situation, no skill is required to shoot the ball in a snake's mouth and the playing Hoke's bonus becomes an "apparent" game of skill.

We have addressed all of Appellant's arguments and find Appellant has not shown error in the Examiner's rejection.[1]

[1] The Examiner and Appellant have debated the significance of Geddes, "Slot Machines on Parade," Mead, 1980, pp. 116 and 121. But we see no reason to address it.

E. CONCLUSION OF LAW

For the foregoing reasons, Appellants have not shown error in the Examiner's reasoning. Accordingly, the Examiner has supported a legal determination of anticipation. Accordingly, on the record before us, claim 1 is unpatentable under §102(b).

DECISION

The decision of the Examiner to reject claim 1 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

vsh

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